



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

November 23, 2005


F.W. Webb Company
Attn: Jerry Fortier, General Manager
160 Middlesex Turnpike
Bedford, MA 01730

Re: Docket No. AF 05-052 – F.W. Webb Company

Dear Mr. Fortier:

Enclosed for your records is a copy of the fully executed and accepted Motion to Accept Settlement Agreement in the above-captioned matter.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

Michael P. Sclafani,
Legal Assistant

cc: Anthony P., Giunta, P.G., Director, Waste Management Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
DES Public Information Officer
Lynn Woodard, DES WMD
Tom Beaulieu, DES WMD
Susan Hanamoto, DES WMD

F.W. Webb Company
160 Middlesex Turnpike
Bedford, MA 01730

Re: F.W. Webb Company, Webb Drive,
Merrimack, NH UST ID #0-111323

**ADMINISTRATIVE FINE
AND LICENSE ACTION
No. AF 05-052**

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and F.W. Webb Company, parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. F.W. Webb Company ("Webb") is the registered facility owner of one underground storage tank ("UST") at the F.W. Webb Company facility ("the Facility"), further identified as UST # 0-111323, located on real property at Webb Drive, Merrimack, NH ("the Property"). Jerry Fortier signed the Registration for Underground Storage Tank Systems for the Facility, received by DES on June 24, 1987, as the owner.
3. On June 17, 2005, the Division issued Notice of Proposed Administrative Fine No. AF 05-052 ("the Notice") to Webb seeking fines totaling \$5,700 for violations of New Hampshire Administrative Rules Part Env-Wm 1401.
4. The Notice cited Webb for violating Env-Wm 1401.04(a) by failing to provide DES with a current registration form for the Facility. Pursuant to Env-C 607.02(a) the Division sought a fine of \$1,000.
5. The Notice further cited Webb for violating Env-Wm 1401.11(a) by failing to maintain accurate stock inventory records for the UST in accordance with RSA 146-C:5 and Env-Wm 1401.11. Pursuant to Env-C 607.05(a) the Division sought a fine of \$500.
6. The Notice further cited Webb for violating Env-Wm 1401.20(a) by failing to submit plans and specifications at least 90 days prior to commencing construction of a substantial modification of the UST. Pursuant to Env-C 607.03(a) the Division sought a fine of \$1,000. The fine sought is hereby withdrawn due to information received from Webb establishing that no substantial modification had occurred.
7. The Notice further cited Webb for violating Env-Wm 1401.25(d) by failing to properly install

and maintain overfill protection equipment on the UST. Pursuant to Env-C 607.05(j) the Division sought a fine of \$200.

8. The Notice further cited Webb for violating Env-Wm 1401.30(g) by failing to perform release detection on the piping of the UST by December 22, 1998. Pursuant to Env-C 607.03(j) the Division sought a fine of \$1,000.

9. The Notice further cited Webb for violating Env-Wm 1401.32(b) by failing to provide corrosion protection on the existing UST by December 22, 1998. Pursuant to Env-C 607.03(e) the Division sought of fine of \$1,000.

10. The Notice further cited Webb for violating Env-Wm 1401.33 by failing to provide corrosion protection for the piping under the dispensers and the piping entering the building for the UST. Pursuant to Env-C 607.03(f) the Division sought a fine of \$1,000.

11. In order to settle this matter, the Division and Webb have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

12. Of the remaining proposed fine in the amount of \$4,700, 20% or \$940 shall be suspended due to this being a one-time unintentional violation. An additional 20% or \$940 shall be suspended due to Webb's history of compliance at this Facility.

13. The suspended portion of the proposed fine, in the amount of \$1,880 is contingent upon Webb maintaining the subject UST facility in compliance with Env-Wm 1401 for a period of two years from the date of the execution of this Agreement. If Webb fails to maintain compliance during the two-year period, the suspended portion of the fine, in the amount of \$1,880 shall become due and payable immediately. If Webb maintains compliance for the prescribed two-year period, the suspended portion of the fine shall be waived.

14. Webb agrees to pay the remaining \$2,820 upon execution of this Agreement by an authorized representative of F.W. Webb Company.

15. Payment under Paragraph #14 and any payment that becomes due pursuant to Paragraph #13 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attention: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

16. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

17. By executing this Agreement, Webb waives its right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

18. The effective date of this Agreement will be the date on which it is signed by an authorized representative of F.W. Webb Company, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

19. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

F.W. Webb Company

11/10/05
Date

COPY
Jerry [Signature], General Manager
Duly Authorized

11/16/05
Date

DES Waste Management Division
COPY
Anthony P. Giunta, P.G., Director

This Motion to Accept Settlement agreement is granted this 22nd day of Nov., 2005.

COPY
for Michael J. Volin, Asst. Comm.
Commissioner
Department of Environmental Services